

U.S. FIGHTING SHAW MOVE TO INVOLVE CLARK

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Panel Ruling Awaited on 4 Motions

The U.S. government will oppose a move to bring Attorney General Ramsey Clark into the legal hassle over the probe of the assassination of President John F. Kennedy, a federal court

was told today.

A three-judge federal panel took under advisement four motions in the continuing battle between District Attorney Jim Garrison and Clay L. Shaw after hearing U.S. Attorney Louis LaCour say his office will object to Clark's being made a party to the proceeding.

Today's hearing was the first in Shaw's attempt to gain a permanent federal injunction against prosecution in state court by Garrison on charges of conspiring to kill President Kennedy.

SHAW IS ALSO challenging the constitutionality of certain state laws under which he is being prosecuted and is asking the federal court to rule that the Warren Commission Report on Kennedy's slaying is "valid and binding" on all courts.

Arguments were heard today on two motions by each side. Shaw's attorneys had asked:

1. That Attorney General Clark be brought into the suit as a defendant. They said this was in connection with their effort to get a ruling on the validity of the Warren Report, which concluded that Lee Harvey Oswald acted alone in killing Kennedy.

2. That four of Garrison's aides be compelled to answer questions put to them by counsel for Shaw. They earlier won court permission to take depositions from members of the DA's staff, but the four aides involved — James L. Alcock, Numa Bertel, Andrew Sciambra and Louis

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Ivon—refused to answer the queries.

Garrison's office had filed two counter-motions:

1. That Shaw's suit asking for the permanent injunction be dismissed. This would have the effect of throwing the matter back into state court for an early trial of Shaw on the conspiracy

charge.

2. That the names of Alcock and first assistant DA Charles Ray Ward be removed from Shaw's suit, making the suit apply specially to Garrison and to his staff only in a general way.

Presiding over the three-judge panel is Judge Robert A. Ainsworth of the Fifth Circuit Court of Appeals. The other two are District Judges Frederick J. R. Heebe and James A. Comiskey.

Shaw's chief counsel is F. Irvin Dymond.

As the hearing opened this morning Judge Ainsworth, the presiding judge, set a limit of 15 minutes on the attorneys for arguing two motions.

WILLIAM WEGMANN, one of Shaw's attorneys, said his client is faced with "an unusual situation" because four of the witnesses Shaw has called in the current proceedings are assistants to Garrison or members of his staff.

"So all are under the control of the DA, who is a defendant," Wegmann said.

Wegmann cited the refusal last week of Garrison's assistants to answer questions.

HE CITED a letter from Garrison in which the DA ordered his personnel not to give information on depositions.

Wegmann said Garrison's letter was received by the staff members on June 4, and the taking of depositions was scheduled on June 5. The letter told them to give only their "name, rank in the DA's office and Social Security number."

WEGMANN said, "It is our position that the defendant did not rely on any law in refusing to answer these questions.

"We do not have a question-by-question refusal to answer," said Wegmann. "We have a pattern of refusal to answer."

He said the refusals were "made in bad faith and blindly, following the instructions of Garrison."

HE CITED a number of questions the aides refused to answer. They covered such subjects as wire-tapping, bribery attempts and the preparation of witnesses by the DA's office.

At one point, Judge Ainsworth reminded Wegmann

that the panel had already at least glanced through the questions asked of the DA's aides.

Judge Heebe said that as he understood the matter, the scope of the questions by Shaw's attorneys "had nothing to do with the guilt or innocence of Clay Shaw."

HE SAID THE questions were asked to give Shaw "advance discovery" of information and were based upon the position "that the whole prosecution is a fraud."

Wegmann agreed with this line of reasoning.

Alcock, responding for the DA's office, said that the questions were not answered because it was felt they were all directed at privileged information.

He denied that the aides relied only on Garrison's letter, saying they have a number of reasons, all involving the question of privileged information, for refusing to answer.

JUDGE HEEBE asked Alcock why he didn't file any motion, for refusing to answer depositions if they were not going to answer the questions.

Alcock said, "My research reflected that this motion is rarely granted."

Judge Heebe said he asked Alcock if he personally felt that all of the questions he refused to answer involved privileged information. Alcock said yes.

He said that Shaw and his attorneys have been given everything they are entitled to under criminal procedure.

ALCOCK CITED a number of cases in which, he said, the courts had refused to allow defendants to use the liberal discovery procedures of civil law to get information about the state's case in a criminal proceeding.

Alcock cited one of the questions in which Sciambra was asked if he had tried to influence the testimony of Perry Raymond Russo. He said this question went to the heart of the criminal case.

Judge Heebe said, "It goes to the heart of the plaintiff's case here, too." He noted that Shaw is claiming that the Garrison case is a fraud.

After Alcock finished his argument, Wegmann responded that "absolute privilege is being claimed here" instead of

partial privilege.

HE SAID the thrust of the plaintiff's argument is that the refusal to answer questions was made on a blanket basis rather than on a good-faith basis, question by question.

Next argued was the motion to join Atty. Gen. Clark as a party to the suit.

Dymond argued this motion, saying, "It is our position that it is the duty of the U.S. attorney general to become a party to this action" to protect the interest of the United States.

HE CITED PART of the

U.S. legal code which he said makes it the duty of the attorney general to prosecute or defend any case in which the government has an interest.

He cited four reasons the government should have an interest in this case:

1. He said the DA is attempting to brand the President of the United States as an accessory after the fact in the Kennedy slaying.

2. The DA, through the investigation, attempts to brand the temporary restraining order issued by Judge Heebe as an illegal interference.

3. The investigation attempts to impugn the chief justice of the U.S. Supreme Court, all other members of the Warren Commission and all federal investigative agencies.

4. The investigation seeks to destroy confidence in the U.S. government.

The DA, Dymond said, would have you believe there was one mammoth conspiracy encompassing everybody, including the President, the Dallas police force, the Secret Service, the FBI and the CIA.

"If that is not something in which the U.S. has an interest, I don't know what is," he said.

Judge Ainsworth asked Dymond if he had any citations of authority for the court to compel Clark to enter the suit.

DYMOND SAID he did, and listed them.

He told the court, "This court undeniably does have the right to compel the attorney general to become a part of these proceedings."

Judge Heebe apparently questioned this reasoning. He

said it is "one thing for the court to order an executive employe" of the government to appear. But he said that in the case of an officer such as the attorney general it would be discretionary.

"Doesn't this run flat right into the teeth of the separation of powers," he asked Dymond.

JUDGE AINSWORTH then asked if Dymond thought the President of the United States could be enjoined.

"Can we enjoin him, too?" he asked. "The President might say, 'Sorry, I haven't got time.' Is he in as good a position as the attorney general?"

Dymond told the court in answer that he thought the President could be enjoined.

Assistant DA Bertel told the judges they were being asked "to substitute your judgment for that of the attorney general."

He said the relief sought by Shaw's attorneys could be granted without the presence of the attorney general.

JUDGE AINSWORTH then announced that LaCour had been invited to sit in on the hearing this morning. Then the judge asked LaCour if he would like to make a statement.

LaCour first made it clear that he was not appearing as a party in the action brought today. He said the only interest the U.S. has in the matter is the involvement of Clark.

"We will object to such an enjoiner (the involvement of Clark in the suit)," he said. He then asked for time to file pleadings backing up his objections, and was granted a week to do so.

ALCOCK THEN began arguments on the DA's motion to dismiss the entire proceedings brought by Shaw in federal court.

Alcock cited a number of U.S. Supreme Court rulings to uphold the position that historically the federal courts have not interfered in similar proceedings.

In arguing his motion to

dismiss the suit, Alcock stated it was his position that there is always inconvenience involved in being a defendant in a criminal proceeding. He said, however, he could see no difference between inconveniences to Shaw and any other defendants charged with a crime.

ALCOCK ALSO said it is his position that there is no irreparable injury in this case. He said if all of Shaw's facts are true, and he can convince a jury that they are true, he probably won't be convicted.

If he is convicted, he can appeal first to the higher state courts and if necessary into the federal system, he said.

Alcock said the only way the district attorney's aides in this suit can disprove the charges is to try their criminal case in state court.

"How else can we prove the case is not a fraud unless we try the case?" he asked.

JUDGE AINSWORTH asked, "You mean we would in effect be trying the criminal case in federal court?"

Alcock said, "Yes."

Judge Heebe interjected that he does not think that would necessarily be the case.

At this point, Alcock, Heebe and Judge Ainsworth got into a discussion about how long it might take to present an evidentiary hearing if the motion to dismiss is denied. Alcock estimated it would take about four weeks since no jury would be involved.

THE ASSISTANT DA said, however, that there is no need for an evidentiary hearing and that in fact such a hearing would "impugn upon privileged information to be presented during the trial."

Judge Ainsworth then brought up the fact that Shaw's attorneys have attacked the constitutionality of the Louisiana conspiracy law under which Shaw is charged.

The judge said the law had been attacked on its face and perhaps the way it has been applied in the case.

HE ASKED ALCOCK what would be the result if the law were declared unconstitutional.

"If the court declares the statute unconstitutional, then there would be no need for an

evidentiary hearing, because the state would not proceed," said Alcock.

Judge Ainsworth replied, "I think you've got your work cut out for you . . . but you have to address yourself to this."

EDWARD F. WEGMANN, another Shaw attorney, predicted that the proceedings on this matter will take a long time because the DA will use them as a forum for "his theories as to what transpired in Dealey Plaza in 1963."

"It is for this reason they

say it would take six weeks to try the case."

Edward Wegmann also told the court that the argument

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has been advanced that there was no connection between the assassination of President Kennedy and the prosecution of Shaw.

"We don't know what overt act we were supposed to have committed," he told the judges, and added that the defense was "given a limited number of overt acts" that included a meeting in the apartment of the late David William Ferrie and a meeting with the late Jack Ruby in the Capitol House in Baton Rouge.

WHEN JUDGE HEEBE said that the state would not be able to introduce information not included in the bill of particulars during the trial, Wegmann countered:

"We have been told otherwise."

He said the defense was repeatedly told by the lower court during hearings that there need not be a connection between the Warren Report, the Shaw trial, what happened in Dealey Plaza and the Garrison-Kennedy investigation.

"NOW WE FIND in another division Alcock saying to the court, 'I need the Zapruder film for preparation of the case, the state vs. Shaw.'"

Judge Ainsworth then asked Wegmann if he had any doubts that when the trial begins, he would hear about "what happened in Dallas."

Wegmann said, "Not the true story, but a story that Garrison, Lane and Weisburg . . . believe in their own distorted minds as to what went on in Dallas."

Wegmann also pointed out that Alcock has gone into Division C of Criminal District Court to get the national archivist to produce the autopsy file on President Kennedy.

THE ATTORNEY said again that "the prosecution has not been brought in good faith."

Judge Ainsworth asked Wegmann what he thought Gar-

rison's motive was.

Wegmann replied that he does not know what the DA's personal motive is. He said he has alleged only that the DA required a judicial forum of some sort for his criticisms of the Warren Commission and that Shaw provided the way to get that forum.

Wegmann said there is a conflict in what Garrison says and what he does. He said Garrison has "joined the grapefruit circuit, speaking to all sorts of groups" and that the DA says repeatedly "I cannot comment on the guilt of or innocence of Clay L. Shaw."

THE ATTORNEY said Garrison does indirectly what he says he will not do. "We can prove that while Mr. Shaw was in the DA's office on March 1, 1967, at about 3 p. m. while awaiting the arrival of his counsel, that Garrison allowed a Life magazine photographer to take Mr. Shaw's picture through a two-way mirror," he said.

Wegmann also cited an article in the National Observer which quotes Garrison as saying "There is no way Clay L. Shaw can get an acquittal."

The attorney said he thinks it is significant that Garrison has been involved in so many federal court suits alleging misuse of his official powers.

He cited the case of TV newsmen Walter Sheridan and Richard Townley, the case of Life Magazine reporter David L. Chandler and the case of James Dombrowski, a civil rights leader whose belongings were seized in a raid.

ASKED BY Judge Ainsworth what law he would rely

on principally, Wegmann said that the suit is claiming extraordinary circumstances and that generally he was relying on the broad equity powers of the court.

He said he is also relying on sections of the U.S. code pertaining to violation of First Amendment rights.

Judge Ainsworth said the big obstacle to the suit is the fact that there is a pending state action. He asked Wegmann to pay particular attention to this obstacle in preparing his briefs.

ATTORNEYS FOR both sides then argued a second Garrison motion to remove Alcock and Ward from Shaw's suit asking for the permanent injunction against prosecution of the case.

Alcock argued that the suit should properly be filed only against Garrison and his office in general, not individual assistants.

The judges then received in evidence a two-inch-thick transcript of the preliminary hearing for Shaw, conducted by a three-judge state panel May 14-17, 1967.

They gave attorneys for both sides until next Monday to file pleadings, and took the matter under advisement.



—States-Item photo.
CLAY L. SHAW, left, charged by District Attorney Jim Garrison of conspiring to murder President John F. Kennedy, accompanies his attorney, **EDWARD F. WEGMANN**, to a three-judge hearing in federal court.



—States-Item photo.
JAMES L. ALCOCK, left, and **NUMA V. BERTEL**, assistant district attorneys, en route to federal court for today's hearing.